

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL CARROLL,

Plaintiff,

V.

KELSEY STEWART, JANE DOE,

## Defendants.

**CASE NO. 3:15-CV-05170-BHS-JRC**

## REPORT AND RECOMMENDATION

NOTED FOR: August 21, 2015

The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States Magistrate Judge J. Richard Creature. The Court's authority for the referral is 28 U.S.C. § 636(b)(1)(A) and (B), and Magistrate Judge Rules MJR3 and MJR4.

Defendants filed the pending motion to dismiss on June 8, 2015, asserting that plaintiff's complaint was barred by the statute of limitations. Dkt. 17. After the motion to dismiss was filed, plaintiff filed a motion to amend his complaint. Dkt. 20. In a separate order, the Court granted plaintiff leave to file an amended complaint. *See* Dkts. 20, 28.

An amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). The original complaint is “treated thereafter as non-existent.” *Loux v.*

1 *Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) *overruled on other grounds by Lacey v. Maricopa County*,  
2 693 F.3d 896 (9th Cir. 2012). Defendants' motion to dismiss attacks the original complaint,  
3 which will be "non-existent" because plaintiff was granted leave to file an amended complaint.  
4 Accordingly, the undersigned recommends that defendants' motion to dismiss (Dkt. 17) be  
5 denied as moot. The Court notes that defendants have the right to renew their motion to dismiss  
6 at the appropriate time.

7 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
8 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
9 objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
10 objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time  
11 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on August  
12 21, 2015 as noted in the caption.

13 Dated this 29<sup>th</sup> day of July, 2015.

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16 J. Richard Creatura  
17 United States Magistrate Judge  
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